

FILED

02/01/2017

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 17-0021

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 17-0021

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FEB 01 2017

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CLERK OF THE SUPREME COURT
STATE OF MONTANA
ORDER

STEVE BULLOCK, Governor of Montana,

Petitioner,

v.

FIRST JUDICIAL DISTRICT COURT,
Hon. Michael McMahon, Presiding,

Respondent.

Petitioner Steve Bullock seeks a writ of supervisory control over the First Judicial District Court in Lewis and Clark County Cause No. BDV-2016-1055. We agreed to stay the District Court proceedings while this petition is pending, and invited responses from the First Judicial District Court, the Plaintiffs in the District Court action, and the Office of the Montana Attorney General. The Plaintiffs and the Attorney General both responded, and Secretary of State Cory Stapleton also filed a response joining the Governor's request. All parties agree that the case presents a proper circumstance for the exercise of supervisory control.

In the District Court action, the Plaintiffs seek declaratory, mandamus, and injunctive relief establishing that the term of office of the current Commissioner of Political Practices, Jonathan Motl, commenced on June 10, 2013, and extends for six years, until June 10, 2019. The parties have stipulated that Commissioner Motl will remain in office until a dispositive decision is made or the stipulation is otherwise dissolved. Now pending before the District Court are several motions to intervene; the court has not entered substantive orders in the proceedings. Before this Court, Petitioner seeks an order directing the District Court to deny the Plaintiffs' requests for relief and to

dismiss the Plaintiffs' complaint in its entirety. Petitioner asks us to declare that Commissioner Motl's term ended on January 1, 2017.

Supervisory control is an extraordinary remedy that is sometimes justified when urgency or emergency factors make the normal appeal process inadequate, the case involves purely legal questions, and, in a civil case such as this one, the other court is proceeding under a mistake of law causing a gross injustice or constitutional issues of state-wide importance are involved. M. R. App. P. 14(3). In this case, it is undisputed that speedy resolution is necessary. We accept supervisory control because we agree with all parties that the legal questions presented to us involve emergency factors and constitutional issues of statewide importance, and that appeal would not be an adequate remedy.

The Montana Commissioner of Political Practices is appointed by Montana's governor, subject to confirmation by a majority of the state senate. Section 13-37-102(1), MCA. A Commissioner of Political Practices serves a six-year term unless he or she is appointed to fill an unexpired term due to a vacancy in the office, in which case the Commissioner serves out the unexpired term. Sections 13-37-103 and -104, MCA.

Governor Steve Bullock appointed Jonathan Motl to fill a vacancy in the office of Commissioner of Political Practices by letter dated May 17, 2013, for a term that "will end January 1, 2017." The Plaintiffs have suggested in the District Court that the termination date set forth in the appointment letter is ultra vires and in contravention of the statutory scheme for appointment of a Commissioner of Political Practices; the Attorney General responds that the case is nonjusticiable on grounds of laches and lack of standing by the Plaintiffs.

The Governor and the Attorney General both argue that the statutory scheme is clear and mandates a conclusion that Motl's term expired January 1. Plaintiffs point out that § 13-37-102, MCA, contains language different from other statutes creating terms of office by prescribing that the "individual" appointed is to serve a six-year term. Plaintiffs cite statutes involving other state officers, which provide, for example, that a county

officer “holds office for a term of 4 years and until a successor is elected and qualified” and takes office at 12:01 a.m. on January 1 following the officer’s election. Sections 7-4-2205 and 7-4-2203, MCA. Plaintiffs argue further that, because the two prior appointees were never confirmed by the Senate, there was not a “vacancy” in the office to trigger the application of §§ 13-37-103 and -104, MCA. Finally, Plaintiffs invoke § 2-16-213, MCA, to argue that, in any event, Motl holds office until his successor is appointed and qualified.

We find it unnecessary to resolve the statutory ambiguity alleged by the Plaintiffs in this case. It is undisputed that the Governor appointed Motl to serve a term ending January 1, 2017; that he so advised the Secretary of State; and that the Senate confirmed Motl to a term ending January 1, 2017. No one questioned the term of appointment until Plaintiffs filed their lawsuit just ten days before this term was to expire. Under these circumstances, it would be inappropriate for this Court to interfere with the Governor’s express appointment and the Senate’s confirmation of that appointment. We decline to change the term end date specifically set by the Governor in his order appointing Motl.

We agree with the Plaintiffs, however, that Montana law requires that Motl remain in office until his successor is appointed and qualified. Section 2-16-213(2), MCA, provides that “[a]n officer shall continue to discharge the duties of the office, although the term has expired, until a successor has qualified.” This statute reflects longstanding Montana law—*see e.g. State ex rel. Olsen v. Swanberg*, 130 Mont. 202, 210-211, 299 P.2d 446, 451 (1956); *State ex rel. Flynn v. Ellis*, 110 Mont. 43, 50, 98 P.2d 879, 882-83 (1940); *State ex rel. Sandquist v. Rogers*, 93 Mont. 355, 362, 18 P.2d 617, 618 (1933). The Governor, the Attorney General, and the Secretary of State have not suggested otherwise. Therefore,

IT IS ORDERED that the petition for a writ of supervisory control is GRANTED.

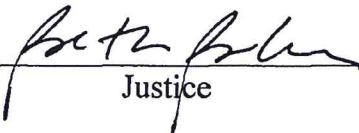
IT IS FURTHER ORDERED that the District Court shall enter an order forthwith denying the Plaintiffs’ request for relief and shall dismiss the Plaintiffs’ complaint in Lewis and Clark County Cause No. BDV-2016-1055.

IT IS FURTHER ORDERED that the term of Commissioner of Political Practices Jonathan Motl expired on January 1, 2017.

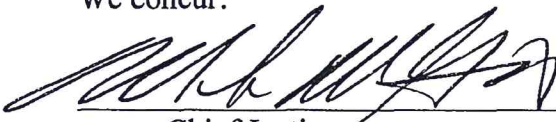
IT IS FURTHER ORDERED, pursuant to § 2-16-213, MCA, that Commissioner Motl shall continue to discharge the duties of his office until a successor has qualified.

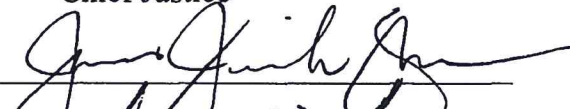
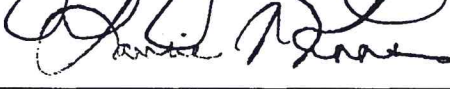
The Clerk is directed to provide copies of this Order to all counsel of record.

Dated this 1st day of February, 2017.


Justice

We concur:


Chief Justice


Justices